

# **EXHIBIT I**

Page 1

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

3 Case No. 1:15-cv-01079

4 -----x

5 JORDAN HERNANDEZ,

6 Plaintiff,

7 - against -

8 PITCO FRIALATOR, INC.,

9 Defendant.

10 -----x

11 January 26, 2018

12 11:07 a.m.

13

14 Videotaped Deposition of Expert Witness

15 FRED R. STOLFI, taken by the Defendant,

16 pursuant to Notice, held at the offices of

17 Seyfarth Shaw LLP, 620 Eighth Avenue, New

18 York, New York, before Tammy O'Berg, a

19 Shorthand Reporter and Notary Public of

20 the State of New York.

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<p>1 APPEARANCES :</p> <p>2</p> <p>3 ZDARSKY, SAWICKI &amp; AGOSTINELLI LLP</p> <p>4 Attorneys for Plaintiff</p> <p>5 1600 Main Place Tower</p> <p>6 350 Main Street</p> <p>7 Buffalo, New York 14202</p> <p>8 BY: GERALD T. WALSH, ESQ.</p> <p>9</p> <p>10 SEYFARTH SHAW LLP</p> <p>11 Attorneys for Defendant</p> <p>12 233 South Wacker Drive</p> <p>13 Suite 8000</p> <p>14 Chicago, Illinois 60606-6448</p> <p>15 BY: SHAWN WOOD, ESQ.</p> <p>16</p> <p>17</p> <p>18 ALSO PRESENT:</p> <p>19 STEPHEN KENT,</p> <p>20 Videographer</p> <p>21 * * *</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 2</p> <p>1 (The following document was</p> <p>2 premarked.)</p> <p>3 (Stolfi Exhibit 1, multipage</p> <p>4 expert report, marked for</p> <p>5 identification, as of this date.)</p> <p>6 THE VIDEOGRAPHER: Good morning.</p> <p>7 We are going on the record at 11:07</p> <p>8 a.m. on January 26th, 2018.</p> <p>9 Please note that the microphones</p> <p>10 are sensitive and may pick up</p> <p>11 whispering, private conversations, and</p> <p>12 cellular interference.</p> <p>13 Please turn off all cellphones</p> <p>14 or place them away from the</p> <p>15 microphones as they can interfere with</p> <p>16 the deposition audio.</p> <p>17 Audio and video recording will</p> <p>18 continue to take place until all</p> <p>19 parties agree to go off the record.</p> <p>20 This is media unit one of the</p> <p>21 recorded video deposition of Fred R.</p> <p>22 Stolfi, in the matter of Jordan</p> <p>23 Hernandez v. Pitco Frialator, filed in</p> <p>24 the United States District Court,</p>
<p>1 STIPULATIONS</p> <p>2</p> <p>3 IT IS HEREBY STIPULATED AND</p> <p>4 AGREED, by and between the Attorneys for</p> <p>5 the respective parties hereto, that filing</p> <p>6 and sealing be and the same are hereby</p> <p>7 waived;</p> <p>8 IT IS FURTHER STIPULATED AND</p> <p>9 AGREED that all objections, except as to</p> <p>10 the form of the question, shall be</p> <p>11 reserved to the time of the trial;</p> <p>12 IT IS FURTHER STIPULATED AND</p> <p>13 AGREED that the within deposition may be</p> <p>14 signed and sworn to before any notary</p> <p>15 public with the same force and effect as</p> <p>16 though signed and sworn to before the</p> <p>17 Court.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 3</p> <p>1 Western District of New York, Case</p> <p>2 number 1:15-cv-0179 -- 01079.</p> <p>3 This deposition is being held at</p> <p>4 Seyfarth Shaw, located at 620 Eighth</p> <p>5 Avenue.</p> <p>6 My name is Stephen Kent from the</p> <p>7 firm Veritext New York, and I'm the</p> <p>8 videographer. The court reporter is</p> <p>9 Tammy O'Berg, also from the firm</p> <p>10 Veritext New York.</p> <p>11 I'm not authorized to administer</p> <p>12 an oath. I'm not related to any party</p> <p>13 in the this action, nor am I</p> <p>14 financially interested in its outcome.</p> <p>15 Counsel and all present in the</p> <p>16 room will now state their appearances</p> <p>17 and affiliations for the record.</p> <p>18 If there are any objections to</p> <p>19 the proceeding, please state them at</p> <p>20 the time of your appearances,</p> <p>21 beginning with the noticing attorney.</p> <p>22 Counsel will now identify</p> <p>23 themselves and the parties they</p> <p>24 represent.</p>

<p>1 Q. I do it, as well. On a 2 deposition we need to allow the court 3 reporter to let each of us finish, and if 4 I'm doing that at all, please let me know. 5 You have a Ph.D. in mechanical 6 engineering, correct? 7 A. Correct. 8 Q. From Rensselaer Polytechnic 9 Institute in Troy, New York? 10 A. Correct. 11 Q. There's some description of a 12 degree below that here on your resume. 13 Can you explain what that is? 14 A. So one of the -- you know, one 15 of the engineering societies decided that 16 there should be a degree somewhere between 17 master's and Ph.D. They decided to have, 18 like, an intermediate degree. It's 19 equivalent to, like, ENG in Europe, and so 20 I received that from Columbia University. 21 Since then I don't even know if Columbia 22 gives it out anymore. 23 Q. So they've eliminated that 24 category --</p>	Page 14	<p>1 job that I was already doing; and so I 2 decided to go back to school and get the 3 Ph.D. Xerox paid for it. 4 Q. But then you left Xerox almost 5 right after you obtained that degree about 6 a year later? 7 A. I actually defended in 1998, but 8 the school and I had a little disagreement 9 about how many credits I paid for. You 10 know, what happened is the bursar's office 11 and the registrar's office combined, and 12 then they lost a lot of records. 13 And so most -- you know, the 14 thing is I spent so much time to get the 15 Ph.D., Most of the other students who were 16 affected, you know, was sort of immediate, 17 and they found the records. 18 So what they told me is that I 19 had to pay for eight more credits of 20 research at the university. So I went 21 through my files and I actually found 22 receipts for five credits; and so I showed 23 it to them, and they said, Okay, you owe 24 us for three. So I said, Well, actually,</p>	Page 16
<p>1 A. I think they've eliminated that 2 category; although, it still might be on 3 the books, to be honest, but it was what's 4 meant to be something between a master's 5 and a Ph.D. 6 Q. And your Ph.D. you went for much 7 later, in 2000, whereas you graduated with 8 your bachelor's degree in 1972, correct? 9 A. Yes. 10 Q. Why is it that you went after, 11 what, 28 years, from -- why is it that 12 after 28 years from graduating from -- 13 completing your bachelor's degree that you 14 went for the Ph.D.? 15 A. Okay. So right after the 16 master's, I got a job in industrial 17 research, and, really, that's what I was 18 doing for some 25 years. 19 Then I realized that, you know, 20 with the proliferation of Ph.D.s, I would 21 not have gotten hired into industrial 22 research without a Ph.D., so I started to 23 realize -- I started to realize that they 24 probably would not have hired me for the</p>	Page 15	<p>1 I don't think I owe you for anything. 2 This is all I could find. I think I paid 3 for it all. And they said, Well, if you 4 can find the other three, then we'll give 5 you credit for that; if not, then you owe 6 us for three credits, so I left. 7 And then as I was thinking of 8 leaving Xerox, I decided maybe it was time 9 to get the degree. So I sort of knuckled 10 under and paid for the three credits and 11 got my degree. 12 Q. And under what circumstances did 13 you leave Xerox? 14 A. They had offered early 15 retirement. They didn't actually expect 16 me to take it; because the early 17 retirement was supposed to be effective 18 January 1st of my 50th year, and so I 19 would not have qualified because I was 20 born on January 9th. 21 Then for some reason the company 22 decided it could not be January 1st, it 23 was going to be January 20th, which means 24 I qualified by 11 days; and so I told them</p>	Page 17

<p>1 I think I'd like to take it.</p> <p>2 I mean, it was looking like they</p> <p>3 were going to close our place. Our lease</p> <p>4 was up. So it wasn't clear what the</p> <p>5 future was where I was working, and so I</p> <p>6 decided to just take early retirement.</p> <p>7 Q. So you retired at age 50?</p> <p>8 A. I retired at age 50 from Xerox.</p> <p>9 I'm a retiree.</p> <p>10 Q. Sir, are you a licensed</p> <p>11 professional engineer in the State of New</p> <p>12 York?</p> <p>13 A. No.</p> <p>14 Q. Do you have a professional</p> <p>15 engineer license in any state?</p> <p>16 A. No.</p> <p>17 Q. Your first job listed back in</p> <p>18 1976 on your CV, can you explain this</p> <p>19 position?</p> <p>20 A. So it's a research position.</p> <p>21 Smith Corona -- so Smith Corona made</p> <p>22 typewriters, and they started a very small</p> <p>23 research lab in Danbury, Connecticut, to</p> <p>24 do research on an electronic typewriter;</p>	Page 18	Page 20
<p>1 and so that was my first job after RPI,</p> <p>2 after the master's.</p> <p>3 Q. Was that a full-time job?</p> <p>4 A. Yeah.</p> <p>5 Q. It just says, Member of</p> <p>6 technical staff.</p> <p>7 Did you have a title?</p> <p>8 A. Yeah, that was it.</p> <p>9 Q. Okay. Just member of a -- and</p> <p>10 then -- above that it says, Senior member</p> <p>11 research staff when you went to Phillips.</p> <p>12 Did you have a title at Phillips</p> <p>13 or, again, just a staff member?</p> <p>14 A. No, that, that was my title,</p> <p>15 senior member research staff.</p> <p>16 Q. What is the distinction between</p> <p>17 the technical staff and the research staff</p> <p>18 that you delineated on the CV here?</p> <p>19 A. Different companies call it</p> <p>20 different things, I guess.</p> <p>21 Q. Similar duties?</p> <p>22 A. Very similar.</p> <p>23 Q. You mentioned that Smith</p> <p>24 Corona's best known as the typewriter</p>	Page 19	Page 21

<p>1 someone would have in a kitchen, in a home  2 kitchen?  3 A. Yes.  4 Q. Like something that's about a  5 foot wide or something like that?  6 A. Yeah, like that.  7 Q. And you only worked on that for  8 two weeks?  9 A. Yeah.  10 Somebody brought a lawsuit  11 against Phillips because the fryer caught  12 fire, and so we brought the fire to the --  13 the fryer to the lab and tested it and  14 really couldn't get it to catch fire, so  15 we just wrote a report. I never knew what  16 happened to it.  17 Q. So that -- you were not in  18 charge of fryers at Phillips, correct?  19 A. No, no. It's a research  20 position.  21 Q. Right.  22 So the one time that a fryer  23 ever came up in the course of working with  24 Phillips, it was strictly because of</p>	<p>Page 22</p> <p>1 worked at Smith Corona, did you develop  2 any prototype for any product that was  3 eventually sold on the market?  4 A. Probably, but I think it was  5 sold much later than when I left. So I  6 worked on it while I was there but wasn't  7 part of the team that actually brought it  8 to market.  9 Q. Okay.  10 So during the three years that  11 you worked at Smith Corona, did you design  12 any product that was then sold by Smith  13 Corona?  14 A. Sort of funny to say -- I worked  15 on a product that eventually got sold by  16 Smith Corona --  17 Q. After you left?  18 A. -- after I left.  19 So the design could have easily  20 changed since I was there.  21 Q. So, while at Smith Corona, you  22 didn't have any design responsibility  23 where you designed a product from  24 prototype to sale; is that correct?</p> <p>Page 24</p>
<p>1 you -- you were testing it after the fact  2 in connection with litigation, right?  3 A. Correct.  4 Q. You were not responsible for  5 fryer design at Phillips, correct?  6 A. No.  7 Q. Correct?  8 A. Correct.  9 Q. When you went to Xerox, then,  10 you were working again with inkjet  11 printers and toners and products like  12 that, correct?  13 A. Later on. I actually started  14 working -- there was a manufacturing  15 research group. So I actually started  16 working on doing manufacturing research, a  17 lot of modeling, a lot of computer  18 modeling.  19 Q. Computer modeling of what  20 products at Xerox?  21 A. No, like a factory, modeling a  22 factory.  23 Q. I guess let's break it down.  24 During the time period you</p>	<p>Page 23</p> <p>1 A. Correct. Just prototype design.  2 Q. Take us through that process.  3 What was the product?  4 A. It was an electronic printer.  5 You know, so I was actually  6 doing the control system -- it was a daisy  7 wheel. I don't know if you remember what  8 daisy-wheel printers looked like, but it  9 was a daisy-wheel printer; and I was doing  10 the control system for the -- you know,  11 for the wheel, for the daisy wheel.  12 Q. What did that entail, the  13 process of whatever your responsibilities  14 were in terms of design and testing?  15 A. Well, so you have to pretty  16 much -- pretty much it's like circuit  17 design. You know, there's a motor, the  18 daisy-wheel hammer to sort of fire the  19 daisy wheel against the paper.  20 And pretty much, in terms of  21 what I designed, was the electronics that  22 did that and the control.  23 Q. So was the daisy printer already  24 an existing product line?</p> <p>Page 25</p>

<p>1 doing sort of the DC motor tract of the 2 printer.</p> <p>3 There was other groups doing 4 stepper motor tracts, other people doing 5 just strictly mechanical design.</p> <p>6 So there was a bunch of products 7 in parallel, you know, competing for what 8 the final product was going to be.</p> <p>9 Q. And your responsibility was on 10 the electrical controls of that unit, 11 correct?</p> <p>12 A. It was the whole DC motor 13 apparatus; so whatever that involved, 14 mechanical and electrical.</p> <p>15 Q. And you talked about component 16 selection.</p> <p>17 What was involved in that part 18 of your job?</p> <p>19 A. It was the beginning of 20 microcomputers. It's sort of like when 21 microcomputers were first invented, you 22 know. So we were starting to incorporate 23 microcomputers into the product. So that 24 was new because they didn't exist before.</p>	Page 30	<p>1 Magnavox, they sell Phillips, they sell 2 Norelco.</p> <p>3 And so if the company has a 4 problem with a particular product line, 5 they will go to research and they will 6 sort of take you away from your primary 7 responsibility to look at the problems 8 with the product, you know. That's their 9 bread and butter.</p> <p>10 So I was hired to do the 11 cryogenic -- you know, the cryogenic 12 refrigerator. But if they had a problem 13 with shavers, you know, that they thought 14 I could contribute to, I was taken off the 15 other project and, you know, put on 16 whatever -- whatever was sort of the hot 17 topic in the corporation. It's another 18 research lab.</p> <p>19 Q. When you were in the research 20 lab, you describe it as a state-of-the-art 21 cryogenic refrigerator for spacecraft use, 22 correct?</p> <p>23 A. Yep.</p> <p>24 Q. Explain to us non-engineers what</p>	Page 32
<p>1 Q. Was that a particular focus of 2 yours, the controls?</p> <p>3 A. Yes.</p> <p>4 Q. Did you prepare schedules and 5 cost estimates as part of your job?</p> <p>6 A. Yes.</p> <p>7 Q. Did you prepare risk analysis as 8 part of your job?</p> <p>9 A. Not formally, no.</p> <p>10 Q. If we move on to Phillips, was 11 it the same type of job; it just had a 12 slightly different name, the member of 13 research staff instead of technical staff?</p> <p>14 A. Yes.</p> <p>15 Q. And you, likewise, were working 16 with a series of different products 17 involved in the research type of role that 18 you've just described?</p> <p>19 A. So, primarily, I worked on the 20 cryogenic refrigerator. That was kind of 21 what I was hired to do. But the way 22 Phillips sort of runs research is that -- 23 you know, it's a multinational 24 conglomerate that sold -- they sell</p>	Page 31	<p>1 that means.</p> <p>2 A. Okay. So NASA -- they have 3 things which image -- you know, so for 4 example, crops, they'll image the ground. 5 For those devices to work, they 6 have to be cooled well below room 7 temperature. They have to be cooled quite 8 a bit, you know, just so that they can 9 sort of see the signature of the ground 10 that they're looking at.</p> <p>11 So what NASA typically does is 12 they fly a bottle of cryogenic fluid -- so 13 they'll fly, you know, liquid nitrogen in 14 orbit so they could image, but, 15 unfortunately, eventually the liquid 16 nitrogen runs out, and then the satellite 17 is useless.</p> <p>18 So what they wanted is they 19 wanted a refrigerator that would actually 20 hold cryogenic temperature, that they 21 would put their sensor on that would just 22 last, you know -- our aim was like three 23 years.</p> <p>24 Q. Did you hold separate positions</p>	Page 33

<p>1 A. Yes.</p> <p>2 Q. And what did that testing</p> <p>3 consist of?</p> <p>4 A. Again, the Xerox lab was very</p> <p>5 well-equipped in terms of test equipment.</p> <p>6 So you would look at responses</p> <p>7 on an oscilloscope. You would also do</p> <p>8 frequency-response stuff using a spectrum</p> <p>9 analyzer, sound measurements. I mean, we</p> <p>10 were fairly well-equipped.</p> <p>11 Q. So in that sense you would build</p> <p>12 a prototype of whatever component or</p> <p>13 product you were working on, correct?</p> <p>14 A. Correct.</p> <p>15 You realize there's a difference</p> <p>16 between research and product development.</p> <p>17 Those are two actually different areas of</p> <p>18 a company.</p> <p>19 So for research you're sort of</p> <p>20 looking at new components that the product</p> <p>21 people would use to put in a product that</p> <p>22 they design for sale.</p> <p>23 So you don't work on the product</p> <p>24 specifically, you're working on sort of</p>	Page 50	<p>1 distinction I think you described a moment</p> <p>2 ago, which is that you said we need to</p> <p>3 understand that within these companies</p> <p>4 where you worked, that product development</p> <p>5 was separate and apart from the research</p> <p>6 arm where you worked.</p> <p>7 Isn't that what you said a</p> <p>8 moment ago?</p> <p>9 A. Yes.</p> <p>10 Q. I just wanted to clarify that</p> <p>11 you were on the research side in each of</p> <p>12 the three jobs that you held before you</p> <p>13 went into academia.</p> <p>14 A. Correct.</p> <p>15 Q. You were not on the product</p> <p>16 development -- you personally didn't work</p> <p>17 in product development at any of those</p> <p>18 three companies --</p> <p>19 A. At any of those three</p> <p>20 companies -- never.</p> <p>21 Q. In that sense it's product</p> <p>22 development that would have a prototype,</p> <p>23 that would have a working product, and</p> <p>24 then research would think of ways to</p>	Page 52
<p>1 components -- new components, you know,</p> <p>2 that they could potentially use for the</p> <p>3 product.</p> <p>4 Q. Were you in product development</p> <p>5 with Xerox?</p> <p>6 A. No.</p> <p>7 Q. Were you in product development</p> <p>8 with Phillips?</p> <p>9 A. No.</p> <p>10 Q. Were you in product development</p> <p>11 with Smith Corona?</p> <p>12 A. Smith Corona, the research was</p> <p>13 sort of smaller, so that group did product</p> <p>14 development in addition to research. It</p> <p>15 wasn't my job, but the group did it.</p> <p>16 Q. But you did not do product</p> <p>17 development with Smith Corona, correct?</p> <p>18 A. I'm not sure what you mean by</p> <p>19 the distinction.</p> <p>20 If I work on something which</p> <p>21 goes into a product, is that product</p> <p>22 development? Or you want me to design the</p> <p>23 entire apparatus that gets sold?</p> <p>24 Q. I'm actually building on a</p>	Page 51	<p>1 improve and design components or</p> <p>2 improvements of the existing product line;</p> <p>3 is that correct?</p> <p>4 A. Yeah, correct.</p> <p>5 Also, the corporation wants to</p> <p>6 do something more advanced than what</p> <p>7 they've been selling. So they would go to</p> <p>8 research and say, Can you develop, you</p> <p>9 know, this so that we could put it in a</p> <p>10 more advanced product in the future? So</p> <p>11 we would do that aspect of it.</p> <p>12 Q. And the mere fact that a -- it</p> <p>13 sounds like companies like Xerox and</p> <p>14 Phillips have an entire group of engineers</p> <p>15 in research that are constantly devoted</p> <p>16 toward trying to think of different</p> <p>17 improvements and different ways to do</p> <p>18 things, correct?</p> <p>19 A. Correct.</p> <p>20 So I mentioned in Holland the</p> <p>21 research lab, the NatLab, was about 3,000</p> <p>22 people. Across the street there was</p> <p>23 something called CFD, which was the</p> <p>24 product development arm of Phillips;</p>	Page 53

<p>1 from Xerox, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And you mentioned they offered</p> <p>4 early retirement at Xerox.</p> <p>5       What were the circumstances</p> <p>6 under which you left, besides the offer of</p> <p>7 early retirement? Was that pretty much</p> <p>8 it?</p> <p>9 A. Well, again, the lease was about</p> <p>10 up, and there was some talk that they</p> <p>11 would close the lab and move us all to</p> <p>12 Webster, New York, outside of Rochester.</p> <p>13       I did not want to live in</p> <p>14 Webster, and so they offered me early</p> <p>15 retirement.</p> <p>16       And it wasn't actually as</p> <p>17 good -- they offered my boss early</p> <p>18 retirement two years earlier. It was</p> <p>19 actually a much better deal than I got,</p> <p>20 but I figured it was the best I was going</p> <p>21 to get, so I accepted it.</p> <p>22 Q. Where is Webster, New York?</p> <p>23 A. Right outside of -- right</p> <p>24 outside of Rochester.</p>	Page 66	Page 68
<p>1 Q. And why didn't you want to live</p> <p>2 there?</p> <p>3 A. You have to go there and then</p> <p>4 ask.</p> <p>5 Q. But that was part of your</p> <p>6 motivation to take the early retirement?</p> <p>7 A. That was the primary motivation.</p> <p>8 I did not want to live in Webster.</p> <p>9 Q. Do you live in New York City?</p> <p>10 A. I live in Westchester.</p> <p>11 Q. So going back to the second page</p> <p>12 of your CV, is the top of page two the</p> <p>13 consulting work you do with Elmetech your</p> <p>14 own consulting company?</p> <p>15 A. Yes.</p> <p>16 Q. And the bottom part is</p> <p>17 describing the teaching and lecturing that</p> <p>18 you did?</p> <p>19 A. Correct.</p> <p>20 Q. I don't see any list of</p> <p>21 publications as part of your CV, but</p> <p>22 there's a reference to you do some</p> <p>23 publishing --</p> <p>24 A. I have another CV that I use for</p>	Page 67	Page 69

<p>1 about consulting, but it pays better.  2 Q. You mentioned that retirement --  3 but only for six months.  4 Do you still get paid by  5 Xerox --  6 A. No. That was the condition of  7 taking early retirement, is they would  8 give you full-time pay for six months.  9 Q. And then what?  10 A. And then you're on your own.  11 Q. And this bottom part of this  12 first page of your CV there's a listing of  13 Professional Awards and Affiliations,  14 correct?  15 A. Correct.  16 Q. Are any of these awards in the  17 last 20 years?  18 A. No.  19 Q. Do all of these awards relate to  20 the work you did at Xerox?  21 A. Some at Xerox, some at Phillips.  22 Q. Sir, before leaving your CV, I  23 just want to make clear, does your  24 background include the design of</p>	Page 70	<p>1 Q. Are you familiar with the  2 federal, state, and local safety standards  3 for operating a commercial fryer?  4 A. No.  5 Q. Are you familiar with federal,  6 state, or local safety standards regarding  7 working around hot cooking oil or hot  8 liquids?  9 A. No.  10 Q. The substance of your opinions  11 in this case are on pages four through 10  12 of Exhibit 1, your report, correct?  13 A. Correct.  14 Q. Are all of your opinions in this  15 litigation contained in this report?  16 A. Yes.  17 Q. As you sit here today, do you  18 have any other opinions?  19 A. No.  20 Q. Is there something else you plan  21 to do to offer new opinions, or are these  22 your opinions?  23 A. Well, I'd like to review the  24 expert report that's coming from Pitco,</p>	Page 72
<p>1 commercial fryers?  2 A. No.  3 Q. Have you ever personally  4 designed a commercial fryer?  5 A. No.  6 Q. Do any of the patents you have  7 relate to the design of commercial fryers?  8 A. No.  9 Q. Have any of the jobs you've held  10 related to the design of commercial  11 cooking equipment?  12 A. No.  13 Q. Have you ever worked in a fast  14 food restaurant?  15 A. No.  16 Q. Have you ever held a job that  17 required the operation of a commercial  18 fryer?  19 A. No.  20 Q. Have you ever operated a  21 commercial fryer?  22 A. No.  23 Q. No?  24 A. No. Sorry.</p>	Page 71	<p>1 and if they criticize this report, I would  2 like an opportunity to respond.  3 Q. Other than that, is there  4 anything you plan to do in connection with  5 the engagement in this litigation to offer  6 any different or new opinions?  7 A. Umm, what I would like to do is  8 I would like to examine the patent record  9 to see if -- I know Pitco and -- I believe  10 it's called Middleby, their parent  11 company, do not have patents related to  12 commercial fryers, but I wanted to see if  13 perhaps another company has a patent,  14 which I sort of describe in this report.  15 Q. But you have not done that  16 research as you sit here today, correct?  17 A. Correct.  18 Q. And you did not do that research  19 before you submitted your opinions in this  20 case, correct?  21 A. Well, I looked at the Pitco and  22 the Middleby but not other companies, no.  23 Q. So what you just described a  24 moment ago you have not done up until the</p>	Page 73

<p>1 point of submitting your report, correct?</p> <p>2 A. Correct.</p> <p>3 Q. When were you first hired in</p> <p>4 connection with this litigation?</p> <p>5 A. I don't remember. It's been a</p> <p>6 while.</p> <p>7 THE WITNESS: How long?</p> <p>8 MR. WALSH: I can't answer.</p> <p>9 Q. Has it been years?</p> <p>10 A. It's been years.</p> <p>11 Q. Were you hired more than two</p> <p>12 years ago?</p> <p>13 THE WITNESS: I don't know.</p> <p>14 Gerry, was it more than two years ago?</p> <p>15 Q. You don't have to do homework.</p> <p>16 You can just tell me if you know.</p> <p>17 A. I have records, but I don't</p> <p>18 recall the first time I was approached.</p> <p>19 Q. What would be the record you'd</p> <p>20 look at to refresh your recollection</p> <p>21 regarding that question?</p> <p>22 A. Probably e-mails from Gerry's</p> <p>23 associate.</p> <p>24 Q. Have you worked with Gerry</p>	Page 74	<p>1 A. Correct.</p> <p>2 Q. And then category two, you</p> <p>3 mention a special lid secured by magnets,</p> <p>4 correct?</p> <p>5 A. Magnets or mechanical latches,</p> <p>6 yes.</p> <p>7 Q. With respect to your opinion</p> <p>8 regarding the magnet lid or the lid with</p> <p>9 latches, what is the basis for that</p> <p>10 opinion?</p> <p>11 A. Well, the problem was that when</p> <p>12 the fryer -- see, when the fryer was</p> <p>13 moved, they put on the lid that Pitco</p> <p>14 gives with the fryer, but, unfortunately,</p> <p>15 that lid just sort of sits on top; and so</p> <p>16 when the fryer tipped over, the lid just</p> <p>17 falls off, and all the oil comes out.</p> <p>18 So my feeling was if they sold</p> <p>19 the lid which somehow latches to the</p> <p>20 fryer, either magnetically or</p> <p>21 mechanically, then at least when the fryer</p> <p>22 tips over, the oil would still come out,</p> <p>23 because the lid doesn't have to be</p> <p>24 watertight, but it would come out much</p>
<p>1 previously?</p> <p>2 A. No.</p> <p>3 Q. When did you reach the opinions</p> <p>4 that you're offering in this case?</p> <p>5 A. I don't know. They sort of</p> <p>6 developed slowly over the time since I was</p> <p>7 first approached.</p> <p>8 Q. Turning to page 10, you're</p> <p>9 offering three opinions in this case,</p> <p>10 correct?</p> <p>11 A. Correct.</p> <p>12 Q. Or what you call two categories</p> <p>13 of opinions, but it looks like three</p> <p>14 opinions --</p> <p>15 A. Correct.</p> <p>16 Q. -- that are listed here on page</p> <p>17 10, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Category one, you mention the</p> <p>20 center of gravity of the fryer, what you</p> <p>21 call -- category one includes you</p> <p>22 referencing the center of gravity of the</p> <p>23 fryer and then what you call a temporary</p> <p>24 handle, correct?</p>	Page 75	<p>1 more slowly, and so it wouldn't have</p> <p>2 caused the injury.</p> <p>3 Q. Any other basis for the opinion</p> <p>4 other than what you've just described?</p> <p>5 A. No.</p> <p>6 Q. What testing did you do to</p> <p>7 research that opinion?</p> <p>8 A. None.</p> <p>9 Q. Can you show me the calculations</p> <p>10 you performed in reaching that opinion?</p> <p>11 A. I didn't do any calculations.</p> <p>12 Q. Can you show me any work product</p> <p>13 that you did in connection with forming</p> <p>14 that opinion?</p> <p>15 A. What's a work product?</p> <p>16 Q. Anything other than the words</p> <p>17 typed on the page that we're looking at</p> <p>18 here on page 10.</p> <p>19 A. No, nothing.</p> <p>20 Q. Can you identify any</p> <p>21 professional standards that require such a</p> <p>22 lid?</p> <p>23 A. No.</p> <p>24 Q. Can you identify any</p>

<p>1 professional studies supporting the 2 adoption of this special magnet lid or 3 latched lid?</p> <p>4 A. Well, that's the thing I was 5 going to look for in the patent record, 6 but no.</p> <p>7 Q. But as you sit here today, the 8 answer is no?</p> <p>9 A. Correct.</p> <p>10 Q. Can you tell me how many 11 commercial fryers on the market use this 12 mechanism that you're describing?</p> <p>13 A. That I do not know.</p> <p>14 Q. Can you identify any commercial 15 fryer anywhere in the world that has a 16 magnet lid?</p> <p>17 A. I can't identify one, no.</p> <p>18 Q. Did this idea just come to you 19 based --</p> <p>20 A. Well, I look at the -- I mean, I 21 teach design. I looked at the design of 22 the fryer, and I tried to decide what I 23 would design to have prevented the 24 accident from occurring.</p>	Page 78	<p>1 would need to make this change, or is it 2 just a concept?</p> <p>3 MR. WALSH: Object to the form.</p> <p>4 Go ahead.</p> <p>5 A. Well, it's a concept, but I do 6 know what materials I would need to build 7 it, if that's what you're asking.</p> <p>8 Q. Specifically, can you identify 9 what materials you would need to make this 10 design change?</p> <p>11 A. Permanent magnets, probably 12 neodymium iron boron. They're sort of the 13 strongest and not that expensive these 14 days.</p> <p>15 Q. When you say "the strongest," 16 what does that mean?</p> <p>17 A. The strongest magnetic force for 18 a given size.</p> <p>19 Q. Would you want to use the 20 strongest possible magnet?</p> <p>21 A. Probably, yes.</p> <p>22 Q. Okay.</p> <p>23 What other materials would you 24 need besides that magnet that you just</p>	Page 80
<p>1 Q. So you worked backwards from the 2 accident, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Has your idea here for this 5 design change been subjected to any type 6 of peer review?</p> <p>7 A. No.</p> <p>8 Q. Has it been adopted as part of 9 any industry standard?</p> <p>10 A. No.</p> <p>11 Q. What types of magnets would you 12 need to make this design change? Where 13 would you source the material?</p> <p>14 A. You mean, like, what type of 15 magnet?</p> <p>16 Q. Yeah.</p> <p>17 Let me take a step back.</p> <p>18 Did you build a prototype of 19 this magnet lid that you're talking about?</p> <p>20 A. No.</p> <p>21 Q. Have you ever seen a prototype 22 of a magnet lid for a commercial fryer?</p> <p>23 A. Oh, for a commercial fryer, no.</p> <p>24 Q. Do you know what materials you</p>	Page 79	<p>1 identified?</p> <p>2 A. Something for the lid, probably 3 stainless steel.</p> <p>4 Q. Anything else?</p> <p>5 A. No, because I don't -- I mean, 6 one possibility would be a seal of some 7 sort, you know, some sort of 8 high-temperature plastic, but I don't know 9 that that's necessary.</p> <p>10 I think as long as there's a lid 11 which doesn't fall off when the fryer is 12 tipped over, it would accomplish the 13 result.</p> <p>14 Q. So would you need a seal?</p> <p>15 A. I don't think so.</p> <p>16 Q. Are magnets typically used to 17 seal hot cooking oil?</p> <p>18 A. Hot cooking oil. No.</p> <p>19 Q. Wouldn't oil still escape if you 20 pushed the fryer over?</p> <p>21 A. Yes.</p> <p>22 Q. What methodology did you follow 23 to reach this opinion regarding the magnet 24 lid? Can you describe any methodology you</p>	Page 81

<p>1 followed?</p> <p>2 A. What do you mean by methodology?</p> <p>3 Q. Do you understand that word,</p> <p>4 "methodology"?</p> <p>5 A. No.</p> <p>6 Q. Okay.</p> <p>7 Can you follow -- can you</p> <p>8 describe any process you followed in</p> <p>9 reaching the opinion, or is it just,</p> <p>10 again, a concept that you came up with?</p> <p>11 A. You mean is there a process for</p> <p>12 doing mechanical design?</p> <p>13 Q. Did you follow any methodology</p> <p>14 you can describe in reaching the opinion</p> <p>15 regarding the magnet lid?</p> <p>16 THE WITNESS: I'm not sure what</p> <p>17 he's asking.</p> <p>18 A. I'm not sure what you're asking.</p> <p>19 Q. Okay.</p> <p>20 You don't understand that</p> <p>21 question?</p> <p>22 A. No.</p> <p>23 Q. We already established you did</p> <p>24 not create a prototype, correct?</p>	Page 82	Page 84
<p>1 A. Correct.</p> <p>2 Q. You did not attempt to construct</p> <p>3 the mechanism that you're describing,</p> <p>4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. You did not attempt to source</p> <p>7 the materials in order to build any type</p> <p>8 of model, correct?</p> <p>9 A. Correct.</p> <p>10 Q. You obviously, then, did not</p> <p>11 test any prototype, correct?</p> <p>12 A. Correct.</p> <p>13 Q. How would your design change add</p> <p>14 to the cost of the product?</p> <p>15 A. It would increase the cost.</p> <p>16 Q. Can you show me the cost</p> <p>17 analysis you performed in reaching this</p> <p>18 opinion regarding a magnet lid?</p> <p>19 A. The thing is I don't have any</p> <p>20 details about the design of the fryer. I</p> <p>21 think it was something that was requested,</p> <p>22 but Pitco did not provide them.</p> <p>23 So it's difficult to design</p> <p>24 something around something where you don't</p>	Page 83	Page 85

<p>1 that you need to be especially careful  2 around because it's a vat of hot oil that  3 the person has to work around on a daily  4 basis, correct?</p> <p>5 A. Correct.</p> <p>6 Q. What additional burn hazards  7 might exist if one were to adopt the  8 magnet lid that the you're describing?</p> <p>9 A. Additional? None that I can  10 think of.</p> <p>11 Q. How would the user extract a  12 magnet lid from the top?</p> <p>13 A. Again, that depends on the  14 detail design, not really the concept.</p> <p>15 Q. Can you describe how the user  16 would extract a magnet lid at the top  17 without creating a splashing hazard?</p> <p>18 A. Repeat the question.</p> <p>19 Q. Yes.</p> <p>20 How would the user extract a  21 magnet lid from the top of a fryer if your  22 alternative lid were adopted?</p> <p>23 A. The same way they extract the  24 lid that's provided with the fryer.</p>	Page 86	<p>1 Q. As you sit here today, you have  2 not developed the details of the concept;  3 is that fair?</p> <p>4 A. That's fair, because I don't  5 have any details of the fryer.</p> <p>6 Q. How would you disengage the  7 magnets from your design?</p> <p>8 Have you figured that out yet,  9 or is that something to be figured out in  10 the future?</p> <p>11 A. That would be something based on  12 the detail design.</p> <p>13 Q. So as you sit here today, you  14 can't tell us that, correct?</p> <p>15 A. No, because I don't even know  16 what parts of the fryer are magnetic.</p> <p>17 Q. So at the time you rendered this  18 opinion, you had not determined the  19 specifics with respect to how the magnet  20 lid would come off of the fryer, correct?</p> <p>21 A. Correct. So this is just a  22 concept.</p> <p>23 Q. Can you tell me what a pressure  24 vessel is?</p>	Page 88
<p>1 Q. But you said that -- to use the  2 strongest magnet possible, right?</p> <p>3 A. Correct.</p> <p>4 Q. So that would require jerking it  5 up to pull it real hard to make sure the  6 magnet comes off?</p> <p>7 A. What I would probably do is some  8 sort of latching mechanism so that you  9 sort of move a lever to move the magnets  10 away from the fryer, if I was going to  11 design a detailed design.</p> <p>12 Q. Okay.</p> <p>13 When I asked you previously  14 about what other design changes would be  15 required, you didn't mention that --</p> <p>16 A. No, no, that's part of the lid.</p> <p>17 Q. The latches and the magnets go  18 together?</p> <p>19 A. It's all part of the lid.</p> <p>20 Q. You're using both magnets and  21 latches?</p> <p>22 A. Again, that's -- you're talking  23 about details of the concept, but that  24 would be one possibility.</p>	Page 87	<p>1 A. Umm -- usually a thick-walled  2 device that holds pressure higher than  3 atmospheric inside it.</p> <p>4 Q. If you adopted the change that  5 you're describing involving some sort of  6 powerful magnet or latch that the lid  7 would employ on the fryer, and someone  8 were to leave the lid on with the burner  9 still on heating the oil, what would  10 happen?</p> <p>11 A. Well, again, if there's no seal,  12 pressure shouldn't build up inside the  13 fryer.</p> <p>14 Q. But if there's no seal, you'd  15 have a greater incidence of more oil  16 leaking out in the event that it were  17 turned over, correct?</p> <p>18 A. Correct.</p> <p>19 Q. So if you were to -- the point  20 of the magnet lid, as I understand it, is  21 to keep oil in --</p> <p>22 A. To minimize the oil coming out  23 when it's tipped over.</p> <p>24 Q. Have you determined whether or</p>	Page 89

<p>1 not a pressurized situation would be 2 caused by your alternative design? 3 A. If you left the cover on with 4 the fryer in operation? No, I did not 5 determine that. 6 Q. Did you identify any type of 7 pressure relief that would have to be 8 designed into the product if that design 9 were adopted with respect to the magnet 10 lid? 11 A. I would have to look at the 12 details of how the fryer works in terms of 13 heating oil. I don't know that it builds 14 up a pressure. That would have to be 15 determined. 16 Q. But you haven't considered that 17 as you sit here today, correct? 18 A. I haven't considered that, no. 19 Q. Correct? 20 A. Correct. 21 Q. What instructions would you need 22 to accompany this type of mechanism, this 23 magnet lid, to make sure that it's safely 24 used?</p>	Page 90	<p>1 Q. Would it require some type of 2 warning or instruction? 3 A. No, I don't think so. 4 Q. Have you developed any 5 instruction on how to tell someone to 6 safely use a magnet lid on a commercial 7 fryer containing hot oil? 8 A. No. 9 Q. Have you developed any warnings 10 that would need to accompany a magnet lid 11 as it related to putting it on and taking 12 it off on a commercial fryer containing 13 hot oil? 14 A. No. 15 Q. In any event, we established 16 that in your prior jobs tech writing and 17 the development of warnings and 18 instructions was not your focus, correct? 19 A. Correct. 20 Q. Even if a commercial fryer 21 manufacturer were to adopt this special 22 magnet lid that you described, that would 23 not have prevented this incident from 24 occurring, would it?</p>	Page 92
<p>1 A. I don't know. Instructions on 2 how to put it on and take it off. 3 Q. Would there have to be special 4 warnings on how to do that safely without 5 splashing oil? 6 A. I don't believe so. 7 Q. In any event, did you consider 8 that as part of your opinions when you 9 rendered them? 10 A. No, because I wasn't thinking of 11 the lid while the fryer was operating. 12 Q. But the whole point is, if the 13 oil is hot, you're trying to place it over 14 hot oil -- 15 A. Right, but not being heated, 16 just hot oil in the chamber. 17 Q. But if the oil remained hot and 18 you had to instruct people -- a user how 19 to safely disengage the magnet lid, 20 wouldn't that require some type of 21 training? 22 A. It probably would require a 23 demonstration but not, like, formal 24 training.</p>	Page 91	<p>1 A. No. 2 Q. A user could still decide to 3 push a commercial fryer around containing 4 hot oil, push it over and fall on it, and 5 the fryer would still contain hot oil 6 inside, correct? 7 A. Correct, but the oil wouldn't 8 come out as fast as it would if there was 9 no cover. 10 Q. Okay. 11 What testing did you do to 12 determine that? 13 A. None. 14 Q. Did you test how much oil would 15 escape? 16 A. No. 17 Q. Did you test how much oil it 18 would take for someone to sustain a burn 19 injury? 20 A. No. 21 Q. Did you discuss the speed at 22 which oil would escape when turned over if 23 your device were adopted? 24 A. No.</p>	Page 93

<p>1 Q. Did you perform any testing to 2 determine any of those points? 3 A. No. 4 Q. Did you conduct any measurements 5 or calculations to determine any of those 6 points? 7 A. No. 8 Q. In your report you state, The 9 magnet lid would still allow oil to escape 10 but, quote, slowly cause a mess but not an 11 injury. 12 What's the basis for that 13 opinion? 14 A. Just that the lid would stay in 15 contact with the fryer when it was tipped 16 over, you know, so oil would escape 17 slower. 18 Q. But the oil you're talking about 19 would still be hot, right? 20 A. Correct. 21 Q. And it would still escape, 22 right? 23 A. Right. 24 Q. And the person that fell on it</p>	Page 94	<p>1 determine that? 2 A. No. 3 Q. In connection with this latches 4 lid, is that likewise just a concept? 5 A. Yes. 6 Q. Did you create a prototype? 7 A. No. 8 Q. Did you subject that idea to 9 peer review? 10 A. No. 11 Q. Did you perform any testing in 12 connection with that suggestion? 13 A. No. 14 Q. Did you create any risk analysis 15 associated with that suggestion? 16 A. No. 17 Q. Did you conduct any cost 18 analysis with respect to that suggestion? 19 A. No. 20 Q. Would that suggestion add to the 21 cost of the product? 22 A. Yes. 23 Q. As you sit here today, can you 24 identify any fryer on the market that has</p>	Page 96
<p>1 would still come into contact with it? 2 Correct? 3 A. Correct. 4 Q. So you didn't do anything to 5 determine the rate of spillage if you 6 pushed over a hot fryer containing a 7 magnet lid, did you? 8 A. No, because it wasn't a detailed 9 design, it was a concept. 10 Q. Did you even determine the 11 temperature of the outside of the fryer if 12 the user pushes it over while it contains 13 hot oil and then falls on it? 14 A. No. 15 Q. So do you know whether in that 16 scenario falling onto the fryer would 17 still burn the person who pushed it over, 18 even if no oil escaped, because the 19 outside of the fryer is hot? 20 A. I don't know that much about the 21 design of the fryer. I would assume the 22 outside doesn't -- doesn't get hot when 23 the fryer contains hot oil. 24 Q. Did you do any testing to</p>	Page 95	<p>1 such latches? 2 A. As I sit here today, no. 3 Q. Can you tell us what other risks 4 that latch would create? 5 A. None that I can think of. 6 Q. Do you understand why a lot of 7 the parts of a commercial fryer are smooth 8 so that you can't get things caught on 9 others and create splashing hazards? 10 A. Correct. Yes. 11 Q. You can appreciate that that's 12 part of the -- the engineers that design 13 fryers, not just for Pitco but for all 14 fryers, make sure that it's free and clear 15 of things that can get caught on when 16 people are in a hurry and are moving 17 things around that could splash oil, 18 correct? 19 A. Correct. 20 Q. Do you have any appreciation, if 21 you were to create latches on the sides, 22 whether or not that could increase the 23 possibility of something getting caught 24 and creating a splash hazard?</p>	Page 97

<p>1 A. But the latch would not be for 2 use. The latch is for when the fryer is 3 being moved.</p> <p>4 Q. But you're suggesting that 5 people should still move it while it 6 contains hot oil and not drain it, 7 correct?</p> <p>8 A. No.</p> <p>9 Q. You think they ought to drain 10 it?</p> <p>11 A. I believe they should drain it, 12 yes.</p> <p>13 Q. And it would be a misuse to not 14 drain it, correct?</p> <p>15 A. Correct.</p> <p>16 But in terms of design, you have 17 to sort of assume that the customer might 18 misuse your product. You know, if you 19 sell a fryer with casters on it, you 20 should, as a design engineer, expect that 21 the customer might move it with hot oil in 22 it.</p> <p>23 Q. Does the manufacturer need to 24 make it foolproof?</p>	Page 98	<p>1 magnet lids or latches?</p> <p>2 A. None.</p> <p>3 Q. This case involves an incident 4 that occurred at the Chipotle located in 5 Williamsville, New York, on September 6 27th, 2012, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Have you ever visited that 9 Chipotle restaurant where this occurred?</p> <p>10 A. No, I did not.</p> <p>11 Q. Have you inspected the fryer 12 that was involved in the incident?</p> <p>13 A. No.</p> <p>14 Q. Have you ever seen the Pitco 15 fryer that was involved in the incident?</p> <p>16 A. I saw pictures of it.</p> <p>17 Q. Other than photos, have you ever 18 laid hands on the fryer that was involved 19 in this incident?</p> <p>20 A. No.</p> <p>21 Q. Have you ever personally 22 inspected any Pitco fryer?</p> <p>23 A. Any Pitco -- no.</p> <p>24 Q. Have you ever been to a facility</p>	Page 100
<p>1 A. It's part of the responsibility 2 of the manufacturer, yes.</p> <p>3 Q. So, in your opinion, if any 4 product is capable of causing injury, if 5 it's possible that an independent person 6 can misuse it and cause injury, that makes 7 a product defective?</p> <p>8 A. Yes.</p> <p>9 Q. Any possibility, correct?</p> <p>10 A. If there's a way to design 11 something which would make a product safer 12 for use, even for misuse, it's the 13 responsibility of the design engineer to 14 do that.</p> <p>15 Q. Any type of misuse?</p> <p>16 A. Any type of misuse.</p> <p>17 You know, when you design 18 something, you have to expect that the 19 user, the customer, might misuse your 20 product in some way.</p> <p>21 Q. So let's talk about that.</p> <p>22 On your proposed design changes, 23 what risk analysis did you do to determine 24 what type of misuse somebody might do with</p>	Page 99	<p>1 that manufactured commercial fryers?</p> <p>2 A. No.</p> <p>3 Q. When did you -- what did you do 4 to arrive at the opinions stated in your 5 report?</p> <p>6 A. Sorry. Which opinion?</p> <p>7 Q. We talked about your category 8 one and category two opinions here on page 9 10 of your report, correct?</p> <p>10 A. You mean the conceptual design?</p> <p>11 Q. Just the opinions you're 12 offering -- you submitted a report in this 13 case, right?</p> <p>14 A. Right.</p> <p>15 Q. And it contains the three 16 opinions -- we've talked about one of 17 them; we're going to talk about the other 18 two in a moment -- correct?</p> <p>19 A. It contains three conceptual 20 designs for additions to the fryer which 21 would make it safe in the case of a spill 22 accident.</p> <p>23 Q. What did you do to arrive at the 24 opinions that are contained in your</p>	Page 101

<p>1 report?</p> <p>2 A. Again, it's not opinions;</p> <p>3 they're conceptual designs.</p> <p>4 Q. Okay.</p> <p>5 What did you do to -- other than</p> <p>6 typing the words on the page, what did you</p> <p>7 do to arrive at your conclusions?</p> <p>8 A. Again, there's no conclusions.</p> <p>9 These are concepts for how the design can</p> <p>10 change to make the fryer safe.</p> <p>11 Q. Can you identify any</p> <p>12 calculations that you made?</p> <p>13 A. No.</p> <p>14 Q. Can you identify any test that</p> <p>15 you did?</p> <p>16 A. No.</p> <p>17 Q. Can you identify any methodology</p> <p>18 that you followed on a step-by-step basis?</p> <p>19 A. Well, I teach design, so I used</p> <p>20 the design method that I teach.</p> <p>21 Q. What's in your head?</p> <p>22 A. Yes.</p> <p>23 Q. There's no work product</p> <p>24 associated with the words on this paper,</p>	Page 102	<p>1 Q. Anything else?</p> <p>2 A. No.</p> <p>3 Q. You mentioned you reviewed</p> <p>4 depositions.</p> <p>5 Can you tell me what depositions</p> <p>6 you reviewed?</p> <p>7 A. The Hernandez one and the Reale</p> <p>8 one from Pitco.</p> <p>9 Q. Any others?</p> <p>10 A. No.</p> <p>11 Q. Other than reviewing the</p> <p>12 documents you described, did you do</p> <p>13 anything else to arrive at your opinions?</p> <p>14 A. No.</p> <p>15 Q. You mentioned doing some --</p> <p>16 reviewing some additional Pitco manuals</p> <p>17 online.</p> <p>18 Did you do that before or after</p> <p>19 you submitted your November 2017 report?</p> <p>20 A. Before.</p> <p>21 Q. Do you need some more water?</p> <p>22 A. Yeah, probably.</p> <p>23 MR. WOOD: Can you --</p> <p>24 MR. WALSH: Keep going.</p>	Page 104
<p>1 correct?</p> <p>2 There's nothing written down</p> <p>3 that you can show me that says, this is</p> <p>4 with why I'm arriving at this conclusion?</p> <p>5 A. Correct.</p> <p>6 Q. There's nothing that you did in</p> <p>7 terms of writing things down that allowed</p> <p>8 you to arrive at the conclusions, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And you can't point to -- let me</p> <p>11 take a step back.</p> <p>12 Did you review any documents?</p> <p>13 A. Yes.</p> <p>14 Q. Other than -- what documents did</p> <p>15 you review?</p> <p>16 A. You know, so I looked at all of</p> <p>17 the depositions provided by the attorneys,</p> <p>18 and I looked at -- I looked at manuals</p> <p>19 that Pitco has online in terms of the</p> <p>20 fryer.</p> <p>21 Q. Anything else?</p> <p>22 A. I looked at several things</p> <p>23 regarding responsibility of design</p> <p>24 engineers in terms of ethics.</p>	Page 103	<p>1 Q. Sir, you charge \$350 per hour,</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. How many hours have you spent on</p> <p>5 this engagement?</p> <p>6 A. Oh. Umm, I don't know. I'd</p> <p>7 have to look at the invoice. I don't</p> <p>8 remember off the top of my head.</p> <p>9 Q. Less than 10 hours?</p> <p>10 A. Maybe around 10 hours.</p> <p>11 Q. With respect to your opinion</p> <p>12 regarding a magnet handle, what is the</p> <p>13 basis for that opinion?</p> <p>14 A. You see, one difficulty with the</p> <p>15 fryer, moving the fryer when the oil's</p> <p>16 hot, is the tendency to -- you know,</p> <p>17 you're standing up, and so you move the</p> <p>18 fryer, you know -- you contact the fryer</p> <p>19 at the very top of the fryer to move it</p> <p>20 (indicating).</p> <p>21 You know, so by pushing it on</p> <p>22 the top, you sort of have a tendency to</p> <p>23 make it fall over (indicating), you know,</p> <p>24 because you're applying a force at the</p>	Page 105

<p>1 very top of the fryer.</p> <p>2 So my feeling was if the force</p> <p>3 could be applied somewhere below the</p> <p>4 center of mass -- so there's a handle</p> <p>5 which, when you push the handle, it</p> <p>6 actually pushes the fryer below the center</p> <p>7 of mass. Then it won't have a tendency</p> <p>8 to, you know, fall over.</p> <p>9 Q. What testing did you do to reach</p> <p>10 that opinion?</p> <p>11 A. None.</p> <p>12 Q. Can you show me any calculations</p> <p>13 you performed in reaching that opinion?</p> <p>14 A. I tried to do a calculation,</p> <p>15 but, again, I don't have the details of</p> <p>16 the fryer.</p> <p>17 So I tried to do a calculation</p> <p>18 based on the weight of the oil and sort of</p> <p>19 the shape that's shown in the manual to</p> <p>20 try to estimate where the center of mass</p> <p>21 was for a fryer full of oil.</p> <p>22 Q. But you never actually touched</p> <p>23 the Pitco fryer in question, correct?</p> <p>24 A. Correct.</p>	Page 106	<p>1 professional studies supporting the</p> <p>2 adoption of this special magnet handle on</p> <p>3 a commercial fryer?</p> <p>4 A. No.</p> <p>5 Q. Can you identify any</p> <p>6 professional study that mentions the use</p> <p>7 of a magnet handle on a commercial fryer?</p> <p>8 A. No.</p> <p>9 Q. Can you tell me how many</p> <p>10 commercial fryers on the market use a</p> <p>11 magnet handle?</p> <p>12 A. That I do not know.</p> <p>13 Q. Can you identify any commercial</p> <p>14 fryer that has such a handle?</p> <p>15 A. Not off the top of my head, no.</p> <p>16 Q. Again, did this idea just come</p> <p>17 to you?</p> <p>18 A. Well, based on, you know,</p> <p>19 engineering consideration, you realize</p> <p>20 that by pushing the fryer above the center</p> <p>21 of mass you have a tendency to push it</p> <p>22 over. And so just based on engineering</p> <p>23 intuition, you know that if you push it</p> <p>24 below the center of mass it will not tip</p>	Page 108
<p>1 Q. And you didn't take any</p> <p>2 measurements, correct?</p> <p>3 A. Correct.</p> <p>4 Q. As you sit here today, you can't</p> <p>5 show me any calculations, correct?</p> <p>6 A. Umm -- I guess no. I don't know</p> <p>7 where the paper is that I performed the</p> <p>8 calculations on. It was just a rough</p> <p>9 estimate.</p> <p>10 Q. A rough estimate of what?</p> <p>11 A. Center of mass.</p> <p>12 Q. That's it, the same as the</p> <p>13 center of gravity that you talk about in</p> <p>14 your other opinion, correct?</p> <p>15 A. Sure.</p> <p>16 Q. Other than that, did you do any</p> <p>17 calculations in connection with the magnet</p> <p>18 handle?</p> <p>19 A. No.</p> <p>20 Q. Can you identify any</p> <p>21 professional standards that require a</p> <p>22 magnet handle?</p> <p>23 A. No.</p> <p>24 Q. Can you identify any</p>	Page 107	<p>1 over; it will just move forward.</p> <p>2 Q. Has this idea been subject to</p> <p>3 any type of peer review?</p> <p>4 A. No.</p> <p>5 Q. Has it been adopted as part of</p> <p>6 any industry standard?</p> <p>7 A. No.</p> <p>8 Q. Did you create any prototype?</p> <p>9 A. No.</p> <p>10 Q. Did you actually attempt to</p> <p>11 construct the mechanism that you're</p> <p>12 describing?</p> <p>13 A. No.</p> <p>14 Q. Did you test any mechanism</p> <p>15 consistent with the idea you're</p> <p>16 describing?</p> <p>17 A. No.</p> <p>18 Q. What type of magnets would you</p> <p>19 need to make this design change?</p> <p>20 A. Probably the same ones that you</p> <p>21 would use for the latch.</p> <p>22 Q. What are the materials you would</p> <p>23 need to make this design change work with</p> <p>24 respect to this particular fryer?</p>	Page 109

<p>1        Can you tell me the specifics of  2        all the components and materials you'd  3        have to buy?  4        A. Again, that's detailed design.  5        That depends on the design of the fryer.  6        Q. So am I correct you did not do a  7        detailed analysis, correct?  8        A. Correct.  9        Q. You only came up with a concept,  10      correct?  11      A. Correct. Because I have no  12      information on the -- you know, on the  13      actual design of the fryer.  14      Q. Can you show me the cost  15      analysis that you performed in connection  16      with this suggestion regarding the magnet  17      handle?  18      A. No.  19      Q. Can you show me any risk  20      analysis you performed to determine  21      whether this design change would create  22      any other safety issues?  23      A. No.  24      Q. As you sit here today, can you</p>	Page 110	<p>1        safely used?  2        A. Again, that depends on the  3        detail of the design, not the concept.  4        Q. So you don't know, correct?  5        A. Correct.  6        Q. Do you know what type of  7        warnings you would need to adopt?  8        A. No.  9        Q. Do you know what type of  10      training you would need to implement?  11      A. No, not really.  12      Q. How far would the handle  13      protrude from the front of the fryer?  14      A. Again, that depends on the  15      details of the design, not the concept.  16      Q. Do you know?  17      A. No.  18      Q. What are the dimensions of the  19      handle?  20      A. Again, details.  21      Q. You don't know?  22      A. No.  23      Q. Correct?  24      A. Correct.</p>	Page 112
<p>1        identify any other safety issues that this  2        design change regarding the magnet handle  3        would cause?  4        A. I guess if it slips it might  5        cause a problem. So you would have to  6        ensure that it stays in contact with the  7        fryer when it's being moved.  8        Q. What additional burn hazards  9        might exist if one were to adopt these  10      design changes?  11      A. None that I can think of.  12      Q. What additional potential  13      injuries might be sustained by a user if  14      somebody were to adopt these design  15      changes?  16      A. None that I can think of.  17      Q. How much would the design change  18      cost?  19      A. Again, that's detail design.  20      Q. So you do not know, correct?  21      A. I do not know.  22      Q. What instructions would need to  23      accompany this type of mechanism, this  24      magnet handle, to make sure that it's</p>	Page 111	<p>1        Q. What would be the weight of the  2        handle?  3        A. Do not know.  4        Q. What material would be used to  5        construct the entirety of the handle?  6        A. Again, offhand, stainless steel,  7        but I do not know.  8        Q. How strong would the magnet need  9        to be?  10      A. You would want to do testing of  11      how much force it requires to actually  12      move the fryer.  13      Q. It needs to pull the entire  14      weight of the fryer full oil, under your  15      estimate, correct?  16      A. Correct.  17      Q. And you did not do that testing,  18      correct?  19      A. Correct.  20      Q. Have you tried to construct any  21      handle and attach it to a fryer?  22      A. No.  23      Q. Have you tried to wheel around a  24      fryer containing such a handle?</p>	Page 113

<p>1 A. No. I'm not even aware that 2 they exist. 3 Q. Okay. 4 Going back to the handle, as I 5 understand it, you're proposing that it is 6 the user that takes this magnet handle and 7 places it on the front of the fryer, 8 correct? 9 A. Correct. 10 Q. In rendering your opinions, did 11 you determine exactly where it was that 12 they would need to place the handle; from 13 the top to the bottom, the exact place 14 they would put it? 15 A. No. 16 Q. Did you determine how it is that 17 you would train people on where to put it? 18 A. No (indicating). 19 Q. If the handle is placed less 20 than two feet from the floor, wouldn't you 21 need to bend over to manipulate it? 22 A. Less -- the point is the handle 23 would be in a shape so that you actually 24 push it from the top, but it applies the</p>	Page 122	<p>1 A. That's fair. 2 Again, it's not a detailed 3 design, it was a conceptual design. 4 Q. Is the handle meant for pushing 5 or pulling? 6 A. Both. 7 Q. How is it that you would stop -- 8 force someone to push at the handle as 9 opposed to pushing with their hands at the 10 top of the fryer? 11 A. I'm not sure what you're asking. 12 Q. Well, on an average human being, 13 where does the fryer sit, from the top of 14 their head to their toes? 15 A. Probably a little bit above 16 their waist. 17 Q. Okay. 18 So your arms hang at about your 19 waist, correct? 20 A. Correct. 21 Q. So if you're pushing a grocery 22 cart, if you're pushing any type of cart 23 like that, you'd typically see it about 24 waist-high, correct?</p>	Page 124
<p>1 force below the center of mass 2 (indicating). 3 Q. So how big is this handle? Is 4 it over a foot tall? 5 A. Again, it depends where the 6 center of mass is. 7 Q. It's both a crossways handle and 8 a top-to-bottom handle, because you're 9 pushing it from some other place? 10 A. Correct. 11 Q. Can you show the shape of the 12 handle that you're describing? 13 A. I don't have a drawing, no. 14 Q. Did you decide on that when you 15 rendered this opinion, to describe what 16 the handle would even look like? 17 You didn't draw it, did you? 18 A. No, I did not draw it. Again, I 19 don't have details of the fryer. 20 Q. So there was no -- you did not 21 render an opinion, with respect to any 22 detailed engineering conclusion, as to 23 what that handle would even look like; is 24 that fair?</p>	Page 123	<p>1 A. Correct. 2 Q. So if you put the handle lower 3 than that because of the center of 4 gravity, how is it that you would assure 5 that somebody is using this handle 6 below -- down toward their knees as 7 opposed to pushing at their waist-high 8 place where it's located? 9 A. Sorry. The handle would attach 10 low, you know, but it would come up high 11 so that you would push at waist-height 12 (indicating). 13 Q. So there's some sort of harness 14 that would wrap around the fryer at a 15 lower point, but then the handle would 16 come up in some sort of fashion -- does 17 the handle wrap around the unit 18 waist-high -- excuse me -- at the midpoint 19 and then come up to a point waist-high 20 that is above the lip? 21 A. In terms of concept, yes. 22 Q. But, again, you didn't figure 23 out the details, correct? 24 A. No details.</p>	Page 125

<p>1 Q. Even if a commercial fryer 2 manufacturer were to adopt this special 3 magnet handle that you described, that 4 would not have prevented this incident 5 from occurring, would it?</p> <p>6 A. Well, it might have, because the 7 incident might have occurred because he 8 pushed it on the top of the fryer rather 9 than lower down.</p> <p>10 Q. But it might not have stopped it 11 from happening, right?</p> <p>12 A. Just based on physics, it's hard 13 to imagine that if you push something 14 below the center of mass it would tip 15 over.</p> <p>16 Q. Well, a user could still decide 17 to push a commercial fryer around 18 containing hot oil, push it over, and the 19 fryer would still contain hot oil inside, 20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. If -- if the user wheels a fryer 23 with hot oil around, pushes it over and 24 falls on it, that could happen with or</p>	Page 126	<p>1 occurred if the accident did occur.</p> <p>2 Q. So that was how the scope of 3 this engagement was defined to you, 4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. In any event, there's already a 7 handle on the front of the fryer, correct?</p> <p>8 A. On the door, yes.</p> <p>9 Q. It just doesn't protrude, right?</p> <p>10 A. Correct.</p> <p>11 Q. Do you know why Mr. Hernandez 12 used that handle to pull the fryer away 13 from the wall?</p> <p>14 A. No.</p> <p>15 Q. Do you know why he just didn't 16 grab it from the sides or the lip?</p> <p>17 A. I mean, the fryer was in, 18 like -- next to other equipment, so you 19 might not have been able to grab it from 20 the side, but I do not know.</p> <p>21 Q. Isn't that how you would expect 22 somebody to pull it out, from the lip or 23 the top, waist-high, as opposed to trying 24 to tinker with a door handle?</p>	Page 128
<p>1 without a handle, right?</p> <p>2 A. I guess.</p> <p>3 Q. In fact, here -- you didn't do 4 any testing to decide the frequency that 5 would exist with or without a handle, 6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. Now, here -- how did 9 Mr. Hernandez claim that he pulled the 10 unit away from the wall?</p> <p>11 A. He claims that he sort of grabs 12 the handle on the door and pulls it so 13 that the door doesn't open but the fryer 14 moves.</p> <p>15 Q. Did you do any testing to 16 determine if Mr. Hernandez's account was 17 truthful, whether the weight of the unit 18 could be pulled out from the wall using 19 that handle?</p> <p>20 A. No. I wasn't tasked to figure 21 out how the accident occurred. I was 22 tasked to look at design changes that may 23 have either prevented the accident or 24 prevented the amount of injury that</p>	Page 127	<p>1 A. I mean, I have no opinion on 2 what I would expect.</p> <p>3 Q. Before we leave the subject of 4 the magnet handle, when you mention it on 5 page 10 here, it says, Pitco could also 6 sell a temporary handle to users buying 7 casters.</p> <p>8 Do you see where I'm reading?</p> <p>9 A. Yes.</p> <p>10 Q. We touched on this before.</p> <p>11 Just for the record, what are 12 casters?</p> <p>13 A. Casters are small wheels -- I 14 actually have one with me if you're 15 interested.</p> <p>16 Casters are sort of small 17 wheels. Why they call them casters and 18 not wheels, I do not know, but I know that 19 if it's like -- usually for heavy 20 equipment that you want to move from one 21 place to another, like a refrigerator or a 22 piano, you know, if they have wheels, you 23 would call them casters.</p> <p>24 Q. The fryer that was involved in</p>	Page 129

<p style="text-align: right;">Page 130</p> <p>1 the September 27th, 2012 occurrence had 2 casters on it at the time, right? 3 A. Yes. 4 Q. Did you examine those casters? 5 A. No. 6 Apparently, when the fryer was 7 looked at after the accident, the casters 8 are gone. Now it's on what they call 9 "seismic feet," you know, and bolted to 10 the floor. 11 Q. When you first were engaged in 12 connection with this case, did you ask for 13 an opportunity to visit the location and 14 see if the casters were still there? 15 A. No. I didn't really feel it 16 necessary to actually go to the location. 17 Q. Did you ask to look at the 18 casters when you were engaged at any 19 point? 20 A. Umm -- no, not really, because, 21 again, according to the Hernandez 22 deposition, they were gone, and no one 23 knew where they were. 24 Q. Did you test the casters?</p>	<p style="text-align: right;">Page 132</p> <p>1 A. Just -- only based on what he 2 said, but other than that, no. 3 Q. Can you tell me how sharp 4 plaintiff took the turn? 5 A. How sharp what? 6 Q. Can you tell me how sharp of a 7 turn plaintiff took while he was pushing 8 the fryer that contained hot oil? 9 A. I believe -- you know, he said 10 that he just pulled it straight out, so 11 there was no turning involved. 12 Q. Well, that's when he pulled it. 13 When he was pushing it and he 14 fell on it, was he turning it, or do you 15 know? 16 A. I do not know. 17 Q. So you don't know whether or not 18 he took any turn at that time, correct? 19 A. Correct. 20 Q. Can you tell me how much 21 plaintiff weighs? 22 A. No, not off the top of my head. 23 Q. Can you tell me how much force 24 plaintiff used while pushing the fryer?</p>
<p style="text-align: right;">Page 131</p> <p>1 A. No. 2 Q. Why not? 3 A. Nobody knows where they are. 4 Q. As you sit here today, are you 5 rendering an opinion regarding whether the 6 casters functioned properly at the time of 7 the accident? 8 A. No. 9 Q. Sir, have you -- I think you 10 indicated this a moment ago, that you were 11 not retained to determine the reason for 12 the accident, correct? 13 A. Correct. 14 Q. So have you done any accident 15 reconstruction in connection with this 16 case? 17 A. No. 18 Q. Can you tell me how fast the 19 plaintiff was traveling while pushing the 20 fryer? 21 A. No. 22 Q. Can you tell me whether he was 23 turning the fryer at an angle at the time 24 he tipped it over?</p>	<p style="text-align: right;">Page 133</p> <p>1 A. No. 2 Q. Can you tell me whether the 3 plaintiff continued to push the unit over 4 after he hit an obstruction? 5 A. I do not know. 6 Q. Can you tell me whether or not 7 he hit an obstruction? 8 A. No, I do not know. 9 I did ask that photographs be 10 taken of the floor in front of the fryer, 11 and I did not see any obstruction. 12 Q. Sitting here today, you do not 13 know whether or not plaintiff hit an 14 obstruction, correct? 15 A. Correct. 16 Q. Have you done any testing to 17 determine the answers to any of the 18 following questions -- the questions I 19 just asked? 20 A. No. 21 Q. Finally, you have an opinion 22 regarding the center of gravity, correct? 23 A. Correct. 24 Q. And you state that, The fryer</p>

<p>1 will have a reduced tendency to tip over  2 if the center of gravity could be moved  3 closer to the ground.  4 I am reading that correctly?  5 A. Correct.  6 Q. You state that, This would be  7 accomplished by selling a weighted base to  8 use when buying casters, correct?  9 A. Correct.  10 Q. Sir, what is a weighted base?  11 A. Umm -- heavy steel plate that  12 you would put low down on the fryer.  13 Q. Did you construct a prototype of  14 what you're talking about in that regard?  15 A. No.  16 Q. Did you perform any testing to  17 support that opinion?  18 A. No.  19 Q. Can you show me any engineering  20 drawing that you did in connection with  21 that opinion?  22 A. Again, that's details. No.  23 Q. Is this, likewise, only a  24 concept?</p>	<p>Page 134</p> <p>1 Q. Other than your generalized  2 engineering knowledge and the words on the  3 page, can you point me to any work you  4 performed that supports that conclusion?  5 A. No.  6 Q. How would that add to the cost  7 of the unit?  8 A. I don't know.  9 Q. Would it add to the cost of the  10 unit?  11 A. Yes.  12 Q. How much?  13 A. I do not know.  14 Q. Well, would that add to the cost  15 of the freight of every unit shipped?  16 A. Yeah.  17 Q. How much would that add to the  18 cost of the freight?  19 A. I do not know.  20 Q. When you're done with what  21 you're talking about, what would the unit  22 then weigh?  23 A. I do not know.  24 Q. Would the casters withstand the</p>
<p>1 A. Yes.  2 Q. Am I correct that you did not  3 create any bill of material in connection  4 with this proposed design change?  5 A. Correct.  6 Q. What other changes would you  7 need to make to the product to accommodate  8 this change?  9 A. Again, that's details. It  10 depends on how it would attach to the  11 product.  12 Q. Can you show me any work product  13 that you performed in connection with this  14 conclusion?  15 A. No.  16 Q. Do you even have a rough sketch?  17 A. No.  18 Q. Do you have anything other than  19 the words on the paper of your report to  20 support your conclusion?  21 A. Well, just the knowledge of --  22 you know, dynamics. So you know that if  23 you move the center of mass closer to the  24 ground it's not going to tip over.</p>	<p>Page 135</p> <p>1 extra weight?  2 A. Umm -- you would have to check.  3 I do not know.  4 Q. Do you know whether or not you  5 would need different casters?  6 A. I do not know.  7 Q. Do you know whether or not you  8 would need different size wheels?  9 A. Different size. I wouldn't  10 imagine you would need different size.  11 Q. But you don't know?  12 A. No, I do not know.  13 Q. Can you point to any industry  14 standard that supports your conclusion  15 with respect to this design change?  16 A. No.  17 Q. Can you point to anywhere in  18 your report where you identify the other  19 manufacturers who have adopted this design  20 change?  21 A. No.  22 Q. Sitting here today, can you  23 identify any other manufacturers that have  24 adopted this design change?</p>

<p style="text-align: right;">Page 138</p> <p>1 A. As I sit here today, no.</p> <p>2 Q. Can you show me the risk</p> <p>3 analysis you performed to determine the</p> <p>4 other risks that this design change may</p> <p>5 create?</p> <p>6 A. I did not do a risk analysis.</p> <p>7 Q. Can you show me the cost</p> <p>8 analysis you performed in connection with</p> <p>9 the design change?</p> <p>10 A. I didn't do a cost analysis.</p> <p>11 Q. Did you subject this opinion</p> <p>12 regarding center of gravity to any peer</p> <p>13 review in connection with your conclusions</p> <p>14 regarding commercial fryers in this case?</p> <p>15 A. No.</p> <p>16 Q. You used the words "tendency to</p> <p>17 tip over."</p> <p>18 Is that what happened here; one</p> <p>19 day the fryer tipped over during use?</p> <p>20 A. Again, I don't know what</p> <p>21 happened in particular. I do know the</p> <p>22 fryer tipped over.</p> <p>23 Q. Okay.</p> <p>24 It was moved, correct?</p>	<p style="text-align: right;">Page 140</p> <p>1 A. No.</p> <p>2 Q. Do you know whether or not she</p> <p>3 testified that the thermometer was in</p> <p>4 working order at the time of this</p> <p>5 incident?</p> <p>6 A. You know, I don't know that.</p> <p>7 Q. Do you know whether she</p> <p>8 testified that it was attached with a</p> <p>9 clip?</p> <p>10 A. I haven't seen the deposition,</p> <p>11 so I don't --</p> <p>12 Q. So, fair to say that Miss</p> <p>13 Casimoro's testimony you've never</p> <p>14 reviewed, and you did not review it before</p> <p>15 rendering your opinions in this case; is</p> <p>16 that correct?</p> <p>17 A. Correct.</p> <p>18 Q. Do you have an understanding of</p> <p>19 how a commercial fryer is used in everyday</p> <p>20 operation?</p> <p>21 A. Basic understanding, yes.</p> <p>22 Q. Can you explain your</p> <p>23 understanding?</p> <p>24 A. Usually they have a basket, you</p>
<p style="text-align: right;">Page 139</p> <p>1 A. It was moving, yeah.</p> <p>2 Q. By the plaintiff?</p> <p>3 A. Correct.</p> <p>4 Q. With hot oil in it?</p> <p>5 A. (Indicating).</p> <p>6 Q. With hot oil in it?</p> <p>7 A. Yes.</p> <p>8 Q. Plaintiff did not allow the oil</p> <p>9 to cool, correct?</p> <p>10 A. I think the plaintiff assumed</p> <p>11 that the oil was cool, but, no, he did not</p> <p>12 allow it to cool.</p> <p>13 Q. Did he use a thermometer to</p> <p>14 determine whether or not it was -- should</p> <p>15 be moved?</p> <p>16 A. My understanding is the</p> <p>17 thermometer was not available.</p> <p>18 Q. Did you read the definition</p> <p>19 [sic] of Miss Casimoro?</p> <p>20 MR. WALSH: I think you said</p> <p>21 "definition." You meant "deposition"?</p> <p>22 MR. WOOD: Oh, yes.</p> <p>23 Q. Have you reviewed the deposition</p> <p>24 of Miss Casimoro?</p>	<p style="text-align: right;">Page 141</p> <p>1 put whatever you want to fry in the basket</p> <p>2 and lower it into the hot oil.</p> <p>3 Q. And those baskets are lowered in</p> <p>4 and pulled out of the fryer throughout the</p> <p>5 day, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And the user does not need to</p> <p>8 move the hot fryer while using it to cook</p> <p>9 food, correct?</p> <p>10 A. Correct.</p> <p>11 Q. It stays stationary while in</p> <p>12 use, correct?</p> <p>13 A. Correct.</p> <p>14 Q. It's not a hot dog cart on the</p> <p>15 street, right?</p> <p>16 A. Correct.</p> <p>17 Q. And it's not a scooter or a</p> <p>18 skateboard? That's not it's intention,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. And the fryer can be moved two</p> <p>22 feet out to clean behind it, correct?</p> <p>23 A. That I -- I don't know offhand.</p> <p>24 Q. It's attached to a gas line,</p>

<p>1 perform?</p> <p>2 A. None.</p> <p>3 Q. Had you ever performed tip</p> <p>4 testing on a fryer?</p> <p>5 A. On a fryer, no.</p> <p>6 Q. How many reports has Pitco</p> <p>7 received of users wheeling a fryer full of</p> <p>8 hot oil around a kitchen?</p> <p>9 A. I do not know.</p> <p>10 Q. Do you know whether any</p> <p>11 commercial fryer manufacturers had ever</p> <p>12 received a report of users pushing a fryer</p> <p>13 full of hot oil around a kitchen?</p> <p>14 A. I do not know.</p> <p>15 Q. Do you know how many fryer</p> <p>16 manufacturers sell a fryer with a design</p> <p>17 that is similar or identical to the Pitco</p> <p>18 35C model fryer?</p> <p>19 A. There must be a few, but I don't</p> <p>20 know off the top of my head.</p> <p>21 Q. Do you know how many fryer</p> <p>22 manufacturers sell a fryer with a center</p> <p>23 of gravity that is similar or identical to</p> <p>24 the Pitco Model 35C fryer?</p>	Page 146	<p>1 correct?</p> <p>2 MR. WALSH: Object to the form.</p> <p>3 Go ahead.</p> <p>4 Q. It was a bright yellow and blue</p> <p>5 warning?</p> <p>6 A. Yes.</p> <p>7 Q. Right on the front of the fryer?</p> <p>8 A. Right on the front of the fryer.</p> <p>9 But I don't know that operating</p> <p>10 the machine you would look down to see the</p> <p>11 warning, normally. I mean, I wouldn't</p> <p>12 know that.</p> <p>13 Q. If Mr. Hernandez had followed</p> <p>14 the warning on the front of the fryer,</p> <p>15 this incident would not have occurred,</p> <p>16 right?</p> <p>17 A. Right.</p> <p>18 Q. This is a clear instruction,</p> <p>19 right?</p> <p>20 A. Pretty clear, yes.</p> <p>21 Q. Is there anything unclear about</p> <p>22 the words, Do not move this unit unless</p> <p>23 hot liquids are completely drained?</p> <p>24 A. No.</p>	Page 148
<p>1 A. I do not know how many.</p> <p>2 Q. Do you know how many fryers are</p> <p>3 currently operating in restaurants</p> <p>4 throughout the world that have the same</p> <p>5 design and the same center of gravity as</p> <p>6 the 35 model fryer?</p> <p>7 A. I do not know.</p> <p>8 Q. Do you know whether it's more</p> <p>9 than a hundred thousand?</p> <p>10 A. You know, I don't know.</p> <p>11 Q. Do you know whether it's more</p> <p>12 than 500,000?</p> <p>13 A. No.</p> <p>14 Q. Mr. Stolfi, on the front of this</p> <p>15 fryer there's a warning that says,</p> <p>16 Caution. For your protection do not move</p> <p>17 this unit unless hot liquids are</p> <p>18 completely drained, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And you showed that warning in</p> <p>21 your report, correct?</p> <p>22 A. Yes.</p> <p>23 Q. So if you're operating the</p> <p>24 machine, you'd have to see that warning,</p>	Page 147	<p>1 Q. You've never been trained to</p> <p>2 work in a restaurant, but you understand</p> <p>3 what those words mean, right?</p> <p>4 A. Yes.</p> <p>5 Q. Would you agree Mr. Hernandez</p> <p>6 misused the product?</p> <p>7 A. Yes, but, again --</p> <p>8 Q. Did Mr. Hernandez engage in</p> <p>9 conduct that was contrary to the</p> <p>10 instructions of the manufacturer?</p> <p>11 A. Yes.</p> <p>12 Q. Did Mr. Hernandez engage in</p> <p>13 conduct that was contrary to the product</p> <p>14 warnings?</p> <p>15 A. Yes.</p> <p>16 Q. And had he followed those</p> <p>17 instructions and warnings, there would not</p> <p>18 have been any hot liquid in the fryer at</p> <p>19 the time it was moved, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Didn't Mr. Hernandez himself</p> <p>22 state that he was aware of the burn</p> <p>23 hazards associated with using a fryer</p> <p>24 containing hot oil?</p>	Page 149

<p style="text-align: right;">Page 150</p> <p>1 A. Yes.</p> <p>2 Q. Do you believe that a user would 3 understand the risk of using a fryer 4 containing hot oil?</p> <p>5 A. Yes.</p> <p>6 Q. Do you agree that the risk of 7 burn injury while moving a fryer 8 containing hot oil is open and obvious to 9 a user?</p> <p>10 A. Yes.</p> <p>11 Q. Would you agree that an employer 12 has the responsibility to train its 13 employees to use hot cooking equipment 14 safely?</p> <p>15 A. Repeat it again.</p> <p>16 Q. Sure.</p> <p>17 Would you agree that an employer 18 has the responsibility to train its 19 employees to use hot cooking equipment 20 safely?</p> <p>21 A. Yes.</p> <p>22 Q. Would you agree that the workers 23 in a commercial kitchen work with hot 24 cooking equipment on a daily basis?</p>	<p style="text-align: right;">Page 152</p> <p>1 deposition. If it was e-mailed to me, I 2 might have -- it was certainly not sent to 3 me as hard copy. Most of the others were.</p> <p>4 Q. Would you agree that workers 5 should read the written instruction manual 6 provided with the products they use at 7 work?</p> <p>8 A. Again, up to the employer.</p> <p>9 Q. Well, didn't Mr. Hernandez 10 himself emphasize the importance of 11 following the directions of the 12 manufacturer and the manufacturer's 13 instructions while using hot cooking 14 equipment?</p> <p>15 A. Yes.</p> <p>16 Q. Didn't Mr. Hernandez himself say 17 that once he became the manager he made 18 sure that everybody read the product 19 manuals of the griddle and the fryer and 20 all the cooking equipment?</p> <p>21 A. Yes.</p> <p>22 Q. Didn't Mr. Hernandez say he 23 understood that because he wanted to make 24 sure, as a manager, he would be</p>
<p style="text-align: right;">Page 151</p> <p>1 A. Yes.</p> <p>2 Q. Would you agree that workers 3 should follow their employers' safety 4 protocols?</p> <p>5 A. Yes.</p> <p>6 Q. Would you agree that users 7 should comply with warnings that are on a 8 product that they use at work?</p> <p>9 A. See, that's a tough one, because 10 if your employer tells you to do a certain 11 thing, even though there's a warning on 12 the equipment which would tell you no, I 13 would imagine the employee would follow 14 the employer's instructions.</p> <p>15 Q. And you don't know whether Miss 16 Casimoro said that if anyone had moved a 17 fryer that far away, that they would have 18 been fired?</p> <p>19 A. No.</p> <p>20 Q. Do you know where Miss Casimoro 21 said that she saw that --</p> <p>22 Mr. Hernandez lying down when they found 23 him after he had pushed the fryer over?</p> <p>24 A. Again, I don't recall that</p>	<p style="text-align: right;">Page 153</p> <p>1 responsible for ensuring workplace safety?</p> <p>2 A. Yes.</p> <p>3 Q. Are you disagreeing with his 4 testimony regarding any of those subjects?</p> <p>5 A. No.</p> <p>6 Q. Would you agree all hot cooking 7 equipment carries a risk of burn injury?</p> <p>8 A. Yes.</p> <p>9 Q. Would you agree that following 10 the product safety instruction is 11 especially important when working with hot 12 cooking equipment in a commercial kitchen?</p> <p>13 A. Yes.</p> <p>14 Q. I wanted to ask about kind of a 15 sweeping statement, that any product could 16 be improved, on the first page of your 17 report --</p> <p>18 A. Correct.</p> <p>19 Q. It's numbered page four.</p> <p>20 Do you recall that part of your 21 report?</p> <p>22 A. Yes.</p> <p>23 Q. We discussed that Smith Corona 24 had at one time manufactured firearms,</p>

<p>1 I haven't -- those are the only 2 two depositions, and only one went to 3 trial.</p> <p>4 Q. So, in terms of the 5 word "testimony," I consider it to mean 6 that you testified at a trial, a 7 deposition or a hearing where you were 8 sworn in and you gave expert testimony.</p> <p>9 Is it correct, with respect to 10 testimony, the only times you've given 11 expert testimony are in that one 12 patent-infringement case and in the 13 Guevara case?</p> <p>14 A. Correct.</p> <p>15 Wait. Hold on.</p> <p>16 There might have been another 17 patent-infringement case -- I'm trying to 18 remember if we did a deposition. I do 19 sort of remember. I'd have to look. 20 Maybe one more patent infringement.</p> <p>21 Q. Have you ever given expert 22 testimony in any product liability or 23 personal injury case other than the 24 Guevara case?</p>	Page 158	<p>1 MR. WALSH: He asked, "What's 2 the question?"</p> <p>3 MR. WOOD: I know.</p> <p>4 MR. WALSH: Do you want him to 5 answer it?</p> <p>6 Are you going to restate the 7 question?</p> <p>8 MR. WOOD: Yeah.</p> <p>9 BY MR. WOOD:</p> <p>10 Q. In fact, wasn't a motion filed 11 in the Guevara case where it was argued 12 that you, quote, exhibited no 13 qualifications whatsoever for the design 14 of a commercial fryer?</p> <p>15 A. I don't know. I wouldn't be 16 surprised.</p> <p>17 Q. Do you know if a motion was 18 filed that also challenged the fact that 19 you gave opinions without doing any 20 testing?</p> <p>21 A. It could have been, but I did do 22 some testing on that product.</p> <p>23 Q. Well --</p> <p>24 A. It might have been after the --</p>	Page 160
<p>1 A. Testimony in the sense of 2 deposition or trial? No.</p> <p>3 Q. And that case involved a 4 commercial fryer, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And it involves some issue 7 during the draining of the fryer, correct?</p> <p>8 A. Correct.</p> <p>9 Q. There was a motion that was 10 filed that challenged your credentials as 11 an expert, noting that you had never 12 worked with commercial fryers, correct?</p> <p>13 A. Probably.</p> <p>14 Q. In that case it was argued that 15 you, quote, exhibited no qualifications 16 whatsoever for the design of a commercial 17 fryer, correct?</p> <p>18 MR. WALSH: It was argued? Was 19 that the question?</p> <p>20 MR. WOOD: Yes.</p> <p>21 MR. WALSH: Object to the form.</p> <p>22 Go ahead.</p> <p>23 A. What's the question?</p> <p>24 Q. And in fact --</p>	Page 159	<p>1 yes.</p> <p>2 Q. The motion?</p> <p>3 A. The motion.</p> <p>4 Q. Let me ask -- after there was a 5 motion filed in the Guevara case 6 challenging your opinions based on lack of 7 reliability and lack of testing, did you 8 then go back in the case and do some type 9 of testing after your first report?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 And then you issued a second 13 report, right?</p> <p>14 A. Yes.</p> <p>15 Q. And still later you offered a 16 third report?</p> <p>17 A. That I do not remember.</p> <p>18 Q. Do you know why you did more 19 than one report in that case?</p> <p>20 A. Again, I think some of it was in 21 response to, you know, what the defendant 22 alleged.</p> <p>23 Q. In that Frymaster case, you were 24 claiming to be an expert in fryer design?</p>	Page 161

<p>1 A. No.</p> <p>2 Q. Are you an expert in fryer 3 design?</p> <p>4 A. No.</p> <p>5 Am I an expert in design? Yes.</p> <p>6 That's what I teach at Columbia.</p> <p>7 Q. But you understood that the 8 opinions were challenged on the basis for 9 lack of qualifications and unreliability, 10 correct?</p> <p>11 A. I think that's just standard 12 practice.</p> <p>13 Yes.</p> <p>14 Q. And one of those challenges 15 included that you were not an expert in 16 fryer design, correct?</p> <p>17 A. I do not know, but I wouldn't be 18 surprised.</p> <p>19 Q. To your knowledge, was there 20 ever a court ruling deciding whether you 21 would be allowed to give opinions on fryer 22 design in that case?</p> <p>23 A. No.</p> <p>24 Q. Did you testify at the trial in</p>	<p>Page 162</p> <p>1 MR. WALSH: You want him to take 2 time to read it?</p> <p>3 (Witness perusing document.)</p> <p>4 A. It looks correct.</p> <p>5 Q. Can you identify this document?</p> <p>6 You can look at it. It's 25 7 pages -- that it is your report that you 8 issued in that case?</p> <p>9 A. I believe it is.</p> <p>10 Q. Do you recognize it as your work 11 product?</p> <p>12 A. You know, again, just not 13 reading through the entire thing, but, 14 yes, it looks like it.</p> <p>15 Q. It has a court stamp at the top. 16 We retrieved this from the court file, and 17 I can represent to you -- we can certainly 18 represent to you we didn't swap in pages 19 to trick anybody, but I just need a clean 20 question here to ask one more time.</p> <p>21 So, having had an opportunity to 22 take as long as you need to look at Stolfi 23 Exhibit 2, can you identify this document 24 as a true and correct copy of the report</p>
<p>1 that case?</p> <p>2 A. No.</p> <p>3 (Stolfi Exhibit 2, multipage 4 Exhibit A to Affirmation, marked for 5 identification, as of this date.)</p> <p>6 (Discussion off the record.)</p> <p>7 BY MR. WOOD:</p> <p>8 Q. Sir, showing you what has been 9 marked Stolfi Exhibit number 2, can you 10 identify that document for the record?</p> <p>11 A. It was the document I generated 12 for the Guevara versus Frymaster case.</p> <p>13 Q. That was over a decade ago, 14 right?</p> <p>15 A. Over a decade ago, yes.</p> <p>16 Q. The date on this report is 17 September 18th, 2007, correct?</p> <p>18 A. Right.</p> <p>19 Q. Is this a true and correct copy 20 of the report that you issued in that 21 Frymaster case?</p> <p>22 MR. WALSH: Well, you just gave 23 it to him five seconds ago.</p> <p>24 MR. WOOD: That's fine.</p>	<p>Page 163</p> <p>1 you issued in the Guevara versus Frymaster 2 case?</p> <p>3 A. Yes.</p> <p>4 Q. And is this the first report you 5 issued?</p> <p>6 A. Yes, I believe so.</p> <p>7 Q. Do you still have copies of your 8 file from that case?</p> <p>9 A. Probably.</p> <p>10 Q. So if we wanted to check your 11 second or third reports, we could get a 12 copy of that, as well?</p> <p>13 A. If I did it, sure.</p> <p>14 (Information requested.)</p> <p>15 MR. WALSH: I think I've got 16 copies from the court file. I'll send 17 them to you.</p> <p>18 MR. WOOD: That would be great.</p> <p>19 MR. WALSH: Off the record --</p> <p>20 never mind.</p> <p>21 MR. WOOD: We'll go off in a 22 minute. I'm almost finished.</p> <p>23 BY MR. WOOD:</p> <p>24 Q. Have we covered all matters that</p>

	Page 170	Page 172
1	Thanks.	1 LITIGATION SUPPORT INDEX
2	THE VIDEOGRAPHER: We're now off	2
3	the record. The time on the video	3 REQUESTS FOR PRODUCTION OF DOCUMENTS
4	monitor is 2:05 p.m.	4 Page Line
5	(Time noted: 2:05 p.m.)	5 68 6
6		6 165 14
7		7 168 8
8		8
9		9 INFORMATION TO BE FURNISHED
10		10 Page Line
11		11 None
12		12
13		13 QUESTIONS MARKED FOR A RULING
14		14 Page Line
15		15 None
16		16
17		17 DIRECTION TO WITNESS NOT TO ANSWER
18		18 Page Line
19		19 None
20		20
21		21
22		22
23		23
24		24
	Page 171	Page 173
1	INDEX	1 CERTIFICATE
2	Witness: FRED R. STOLFI	2
3	Examination by: Page	3 I, TAMMY O'BERG, a Registered
4	MR. WOOD 6	4 Professional Reporter and Notary Public
5	MR. WALSH 168	5 within and for the State of New York, do
6		6 hereby certify:
7	EXHIBITS	7 That FRED R. STOLFI, the witness
8	STOLFI DESCRIPTION PAGE	8 whose examination is hereinbefore set
9	1 Multipage expert report 4	9 forth, was duly sworn by me and that this
10	2 Multipage Exhibit A to 163	10 transcript of such examination is a true
11	Affirmation	11 record of the testimony given by such
12		12 witness.
13	Counsel has retained all exhibits.	13 I further certify that I am not
14		14 related to any of the parties to this
15		15 action by blood or marriage and that I am
16		16 in no way interested in the outcome of
17		17 this matter.
18		18 IN WITNESS WHEREOF, I have hereunto
19		19 set my hand this 16th day of February, 2018.
20		20
21		21 
22		22
23		23 TAMMY O'BERG
24		24

44 (Pages 170 - 173)